

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.H., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Durham, NC, Employer**

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**Docket No. 15-336  
Issued: April 14, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 24, 2014 appellant filed a timely appeal from a November 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained left shoulder and elbow conditions causally related to the September 25, 2014 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On September 26, 2014 appellant, then a 45-year-old secretary, filed a traumatic injury claim alleging that on September 25, 2014 she stumbled and fell on her left side, twisting her left foot, when she stood up and began to walk from a seated position at work.<sup>2</sup> She stopped work.

By letter dated October 6, 2014, OWCP advised appellant that no evidence was submitted to establish her claim and requested additional evidence to establish that she sustained a traumatic injury in the performance of duty.

In a September 30, 2014 report, Linda Prezioso, a certified nurse practitioner, related appellant's complaints of neck, arm, and back pain with limited range of motion. Appellant stated that on September 25, 2014 she fell on her left side and twisted her ankle at work. She noted that her foot was okay now but she experienced pain if she tried to do activities of daily living. Ms. Prezioso reviewed appellant's history and conducted an examination. She observed neck pain and tenderness on the left posterior. Examination of appellant's back revealed tenderness on the left side with palpation. Straight leg raise testing was negative. Ms. Prezioso stated that x-rays of the cervical and thoracic spine revealed spondylosis and minimal scoliosis. She diagnosed neck and back pain.

In a September 30, 2014 work status note, Ms. Prezioso stated that appellant's absence was due to illness or injury. She noted that appellant would be out of work from September 29 to October 6, 2014.

In a September 30, 2014 attending physician's report, Ms. Prezioso stated that appellant fell on her left side and hurt her left ankle, back, and shoulder. She noted that x-rays were negative and diagnosed neck and back pain. Ms. Prezioso checked a box marked "no" regarding whether appellant's condition was caused or aggravated by the employment activity previously described. She indicated that appellant was totally disabled from September 29 to October 15, 2014. Appellant was advised to return to work on October 16, 2014.

In a September 30, 2014 x-ray of the thoracic spine, Dr. Dallas A. Smith, Jr., a Board-certified diagnostic radiologist, noted minimal scoliosis convex rightward, less than 10 degrees. He found no compression fractures, lytic, or blastic lesions. Dr. Smith diagnosed minimal scoliosis.

In a September 30, 2014 x-ray of the cervical spine, Dr. Smith observed mild disc space narrowing with anterior spurring at C4-5, C5-6, and C6-7 and reversal of normal lordosis. He reported no fracture dislocation, prevertebral soft tissue swelling, lytic, or blastic lesions. Dr. Smith diagnosed reversal of normal lordosis and spondylosis.

In an October 8, 2014 report, Ms. Prezioso stated that appellant's absence from work was due to injury. She requested that appellant be excused from work on October 7, 2014 and for the two hours she missed on October 6, 2014. Ms. Prezioso stated that she could return to work and

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<sup>2</sup> The record reveals that appellant filed a previous occupational disease claim File No. xxxxxx426.

do her secretarial duties, but for no more than one hour. She advised appellant to do nothing repetitive for over one hour a day until her follow-up appointment on October 21, 2014.

In an October 17, 2014 report, Dr. Philip S. Perdue, Jr., a Board-certified orthopedic surgeon who specializes in sports medicine, related appellant's complaints of left shoulder and arm pain after she fell on her left arm and shoulder three weeks ago at work. Upon examination, he observed pain in the upper deltoid and lateral elbow region on the left side and mild to moderate pain with resisted wrist extension. Dr. Perdue reported normal range of motion in the left arm and good strength. He found no gross laxity in the shoulder region and no obvious swelling in the elbow or shoulder. Dr. Perdue reported that x-rays of the left shoulder were within normal limits. He diagnosed shoulder contusion with deltoid strain and common extensor tendon with elbow strain. Dr. Perdue recommended that appellant continue taking breaks after typing for an hour. He opined that appellant would be fully recovered and on full duty without restrictions.

In an October 17, 2014 report, Dr. Perdue authorized appellant to return to light duty until October 27, 2014 with restrictions of keyboarding for one hour with 10-minute breaks throughout the day.

Appellant submitted physical therapy progress notes dated October 15 to 23, 2014.

In a decision dated November 10, 2014, OWCP denied appellant's traumatic injury claim. It accepted that the September 25, 2014 incident occurred as alleged, but denied her claim finding insufficient medical evidence to establish that she sustained left arm, neck, or back conditions causally related to the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.<sup>6</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

### ANALYSIS

Appellant alleges that she sustained injuries to her left shoulder, neck, and back as a result of a September 25, 2014 employment incident. OWCP accepted that the employment incident occurred as alleged and that she sustained a diagnosed left shoulder and elbow condition but it denied her claim finding insufficient medical evidence to establish that her diagnosed condition was causally related to the accepted September 25, 2014 employment incident.

Appellant submitted an October 17, 2014 report by Dr. Perdue who related her complaints of left shoulder and arm pain after a fall at work. Dr. Perdue conducted an examination and observed pain in the upper deltoid and lateral elbow region on the left side. He reported that x-rays of the left shoulder were within normal limits. Dr. Perdue diagnosed left shoulder contusion with deltoid strain and common extensor tendon with elbow strain. He recommended that appellant continue to take breaks after typing for an hour and opined that she would eventually be fully recovered. The Board notes that, although Dr. Perdue mentions that she fell down at work and provided a diagnosis, he does not opine on or explain whether her fall at work caused or contributed to her diagnosed conditions. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described, caused, or contributed to appellant's diagnosed medical condition.<sup>12</sup> Because Dr. Purdue fails to provide a reasoned opinion as to whether her fall at work caused her left shoulder and wrist conditions, his reports are insufficient to establish her claim.

Appellant also submitted various reports by Ms. Prezioso, a nurse practitioner, dated September 30 to October 8, 2014. Ms. Prezioso accurately described the September 25, 2014 employment incident and provided findings on examination. She stated that appellant's absence

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<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>11</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> *John W. Montoya*, 54 ECAB 306 (2003).

from work was due to illness or injury. These reports, however, are of no probative value because Ms. Prezioso is not considered a physician as defined under FECA. Section 8102(2) provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.<sup>13</sup> Because a nurse practitioner is not considered a physician under FECA, his or her opinion is insufficient to establish appellant’s claim. Similarly, the physical therapy progress notes dated October 15 to 23, 2014 are also of no probative value as physical therapists are not considered physicians under FECA.

The additional September 30, 2014 x-ray reports of Dr. Smith are also insufficient to establish causal relationship. Although he provides a medical diagnosis he does not mention the September 25, 2014 fall at work or attribute appellant’s conditions to the employment incident.

On appeal, appellant alleges that causal relationship was established. She points out that Dr. Purdue acknowledged that a fall at work took place and provided a medical diagnosis. As explained above, however, Dr. Purdue did not provide any opinion or explanation on whether the fall at work caused or contributed to her diagnosed left shoulder and elbow conditions. Causal relationship is a medical issue that can only be shown by reasoned medical opinion evidence that is supported by medical rationale.<sup>14</sup> The Board finds that OWCP properly denied her traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained left shoulder and elbow conditions causally related to the September 25, 2014 employment incident.

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<sup>13</sup> 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>14</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board